

Arkansas Burial Association Board

MINUTES

Wednesday, September 26, 2012, 11 am

101 East Capitol, Little Rock, AR

Conference Room C

Board Meeting

Vice-Chairman Sumner Brashears called the meeting to order. Members present were: Dr. Jacki McCray, Pete Sims, Scott Berna, Steve Ballard, Normal Gilchrest, and Melanie Posey. Members absent were: David Powell, Jr. and James "Sammie" Turner. Staff present: Amy S. Goode, Executive Secretary, James R. Brooke, Auditor and attorney Mark Ohrenberger, Board Counsel.

1. Introduction of the Board and guests, meeting called to order

**2. Administrative**

Motion made by Ballard to approve the August 2012 minutes, seconded by Berna, all in favor. Motion carried.

It was asked by Dr. McCray that at one time the trial balance was sent electronically and Brashears was under that assumption as well. All future trial balances will be sent electronically, so that the Board can have adequate time to look over prior to the meeting. Executive Secretary stated she would be sure to send electronically.

Dr. McCray also inquired of the large drop in the guaranty fund. Executive Secretary explained that the CD's in outside banks have been maturing and as they do they are being placed in a guaranty fund in the treasury. Executive Secretary pointed out the fund on the trial balance.

Motion made by Dr. McCray to approve the July-August 2012 trial balance and DF&A financial documents, seconded by Gilchrest, all in favor. Motion carried.

**3. Gillespie Burial Association**

Secretary/Treasurer Claborne Gillespie had inquired if he would be allowed to transfer \$15,000 from their old business reserves to their new business (Act 443) reserves. As of the June 2012 semi-annual report the Board's records reflected 52 members in the old business which requires a total reserve of \$26,000.00. The association has \$94,743.00 in reserves and according to the auditor has sufficient reserves to allow the transfer of \$15,000 from Old to New.

Motion made by Sims to approve their request to transfer \$15,000 from their old business to their new business reserves, seconded by Posey, all in favor. Motion carried.

**4. Herndon-Cornelius Burial Association**

Executive Secretary informed the Board that at this time the \$25,000 from the 443 New Business account had not been returned. Ms. Pharr as of today's date had put back \$5,200 and is proposing today to repay \$200 a month, but have it all repaid within twelve (12) months. She further explained she didn't want to commit to higher amount in case she may not have it that month. Charlie Coleman, Ms. Pharr's attorney, stated that Ms. Pharr is aware this money needs to be paid back and that she now understands this money belongs to the members. That she didn't want to agree to a certain dollar amount above what she was comfortable for fear that she would be in breach of

contract if one month she did not have the needed revenue. Mr. Coleman further explained she would have it paid back in twelve (12) months.

Brashears inquired would it be possible to get the funds back from whom they were given. Ms. Pharr explained the money had been used for funeral home expenses. Brashears stated that before the Board today was the matter of the proposal Ms. Pharr had planned and her ability to be secretary-treasurer. Executive Secretary informed the Board she was not the secretary-treasurer that was Scott Brown. He was not in attendance at the meeting today. Brashears further stated that Mr. Brown would need to be evaluated in his ability to operate the Association. Ms. Pharr explained that Mr. Brown did not know she had taken the money. She thought since she was an officer she could access those funds, but fully understands now she could not.

Motion made by McCray to approval Pharr's proposal to pay \$200 a month and having balance paid in full in twelve (12) months, seconded by Sims.

Berna questioned, considering there is a little under \$20,000 to repay and Pharr is proposing only \$200 a month, how is her financial situation going to improve in 12 months; so that you could pay a lump sum a very large lump sum? Ms. Pharr stated that some months are better than others in the funeral business, but she believes she will be able to pay more some months.

McCray asked how she was able to access the funds since she was not the secretary-treasurer. Brooke inquired if she were a backup signature on the accounts if something happened to the secretary-treasurer. Pharr stated "yes" she was.

Gilchrest asked what happens at the end of twelve (12) months and she is not able to pay that money back? During Board discussion, it was also mentioned that perhaps a letter of credit from a financial institution guaranteeing any amount of the misappropriated funds she is unable to put back, would be a consideration of the Board. Berna stated he did not feel \$200 a month on a \$20,000 issue is substantial enough; would feel more comfortable that within six (6) month period of time at least half the money is returned. Also, does the secretary-treasurer even know the position she has placed him in?

Current motion failed 6-1

Motion made by Posey to grant an additional 30 day extension to make restitution, seconded by Berna, all in favor. Motion carried.

Amended motion by Posey that the matter be dismissed if full restitution is made within 30 days, seconded by Berna, all in favor. Motion carried.

The 2<sup>nd</sup> order the Board needed to look at, is the secretary-treasurer capable of operating the association? The Board felt this was a serious enough issue that Mr. Brown needs to appear at the next meeting.

Motion made by Berna to request Scott Brown secretary-treasurer of the Herndon-Cornelius Burial Association to appear at the October meeting to discuss his lack of knowledge operating the Association, seconded by Sims, all in favor. Motion carried.

The Board directed Executive Secretary to send a letter impressing upon him the seriousness of the issue and that this could possibly result in a hearing to remove him as secretary-treasurer at a later meeting date if he does appear for the October meeting.

## **5. Church Burial Association**

Executive Secretary updated the Board on the latest findings of the Board Auditor. There has been for a period a time, a problem with reports being filed on time; the President routinely called asking for extensions in preparing and submitting semi-annual reports. The June 2012 semi-annual report was granted an extension until August 31, 2012. The President was informed that this would be the last extension I would grant. The day the report was due the President called once again to inform the Board office that the report was not completed and they needed the Board Auditor to come prepare the report. On Wednesday, September 6, 2012 the Board Auditor went to procure the report and found shortages in the amount of \$10,387.21 in the old business and \$8,633.62 in the new business. The Board staff prepared a Consent Agreement on September 7, 2012 with the aid of the Attorney General's office. Board Auditor explained to the Board he was told that a gentlemen that was hired by the Strickland's to help take care of Mr. Strickland was entering into their house while they were away stealing cash and jewelry. Auditor informed Mrs. Strickland that money should have never been taken home, that it should go to the bank.

Main issue is the shortage and how restitution will be made. It will take a couple of years for the Association to repay it by not paying claims to the contract funeral home if the Board allowed them that option. It's clearly a misappropriation of funds as in other cases and the Board needs to be consistent in their rulings.

Motion made by Berna to reject Consent Agreement as written, seconded by Ballard, all in favor. Motion carried.

Motion made by Gilchrest to summons secretary-treasurer to next meeting to ask specific questions about the misappropriation of funds, seconded by Sims, all in favor. Motion carried.

## **6. Board Discussion**

- a. **Fordyce Burial Association** – Executive Secretary brought the Board up to date on the situation. A policy now owned by Karen Jennings, recently found out her mother (previous owner) had a policy on Donald Hampton while they were married. They divorced and she continued to pay his burial policy. Now both the previous owner and Mr. Hampton have died. Ms. Jennings has continued to pay for Mr. Hampton's policy and he died in 2003. The Board stated the secretary-treasurer could do what he wanted in accordance with the rules. It was advised a refund be paid to individual for overpayment of premiums, but any benefit should be paid to the funeral home.

## **7. Attorney Updates**

### **a. Drew County Burial Association update**

Attorney Mark Ohrenberger updated the Board that since our last meeting Dick Horne with Dover, Dixon, Horne has filed a complaint and intervention on behalf of 4-6 old business members of that Association; they are challenging the plan of distribution and the Associations authority to dissolve. Horne's clients have adopted the same position this Board has taken. Attorney for the Association does not intend to oppose Mr. Horne and his clients intervening in the lawsuit. A bench trial has been set for December 5<sup>th</sup> in Little Rock. Mr. Horne indicated he was going to send out written discovery requests and take depositions of some of the members and officers that made the decision to dissolve. This will happen over the next few months. Old business members that Mr. Horne represents are of the opinion that this is just a ploy to pay out a lot of money to new business members that have not paid very much in. It is a way to co-mingle the money that otherwise would not happen.

## **8. Next Meeting – October 24, 2012**

## **9. Adjournment**

Motion made by Brashears to adjourn since there was no further business to discuss, seconded by Berna, all in favor. Motion carried.

ATTEST:
